



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

MARY ANN WRIGHT
Acting Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

April 1, 2005

CERTIFIED RETURN RECEIPT
7099 3400 0016 8896 1454

Mr. Tracy Burnham
Decorative Landscaping
3231 North Millcreek Road
Pleasant Grove, Utah 84062

Subject: Proposed Assessment for State Cessation Order No. MC-05-03-02-01,
Unpermitted Site near Bluffdale (M/035/023), Salt Lake County, Utah

Dear Mr. Burnham:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Paul Baker, on March 17, 2005. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-05-03-02-01- Violation 1 of 1 \$198

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. If you feel that you are eligible for good faith, you should supply relevant information to the assessment officer within 15 days of the violation abatement date so that it can be factored into the final assessment.

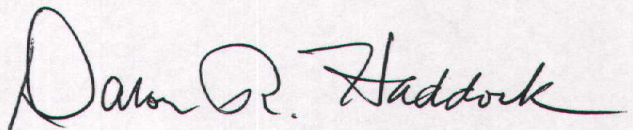
Tracy Burnham
Page 2 of 2
M/035/023
April 1, 2005

Otherwise, under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

DRH:jb
Enclosure: Worksheet
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WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Tracy Burnham PERMIT M/035/023
NOV / CO # MC-05-03-02-01 VIOLATION 1 of 1

ASSESSMENT DATE April 1, 2005

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

Mining without appropriate approvals/ Loss of reclamation potential

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. Several acres have been disturbed at this location without having obtained a permit to do so. This site is located on property owned by Mr. Burnham and much of the site has been disturbed by excavating rocks using mechanized equipment. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 4

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that the operator has primarily been taking rock from the surface, but during the inspection, a trackhoe was digging rock from a hole about 5-10 feet deep next to a rock outcrop. Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed (estimated at around 20 acres). There is potential for sediment to leave the site, but no evidence of impacts off the site was observed. Further discussion with the inspector revealed that the damage is probably temporary and the site should be readily reclaimable. The soil resources have not been lost but have been replaced on the surface as excavation proceeded. Most vegetation has been removed from the mining area, but the site matches surrounding topography and will require little/ no grading. The Operator is the Land Owner and has been taking care not to leave a mess. Damage is considered minimal and points are assigned in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 24

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 5

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that neither the operator nor landowner were aware of the need for a permit from DOGM for this operation. They did not realize that removing the landscape rock would be considered to be a mining operation. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to obtain a permit prior to conducting mining operations. No contact was made to the Division, to verify the need for a permit. Once the requirements were explained to the Operator, he was very cooperative and expressed the desire to achieve compliance. The Operator was considered negligent primarily out of ignorance and the confusion about what constitutes mining operations, thus the assignment of points in the lower third of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10

- (Permittee used diligence to abate the violation)
 • Normal Compliance 0
 (Operator complied within the abatement period required)
 (Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
 (Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
 (Operator complied within the abatement period required)
- Extended Compliance 0
 (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
 (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? difficult

ASSIGN GOOD FAITH POINTS - 20

PROVIDE AN EXPLANATION OF POINTS:

*** Upon issuance of the Cessation Order, the Operator immediately began the process of filing a Notice of Intent for Small Mining Operations. The information, including a reclamation bond, had all been submitted by March 24, 2005, well before the 30-day deadline that was required by the CO. The Operator was extremely cooperative in every respect. Abatement of the violation was done about as rapidly as could be done and well before the deadline, thus the assignment of the full 20 points for good faith.

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-05-03-02-01</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>24</u>
III. TOTAL NEGLIGENCE POINTS	<u>5</u>
IV. TOTAL GOOD FAITH POINTS	<u>-20</u>
TOTAL ASSESSED POINTS	<u>9</u>
TOTAL ASSESSED FINE	<u>\$ 198</u>

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TRACY BURNHAM
DECORATIVE LANDSCAPING
3231 N MILLCREEK RD
PLEASANT GROVE UT 84062

JB DOGM M/035/023 4/1/05

2. Article Number

(Transfer from service label) 7099 3400 0016 8896 1454

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Michelle Burnham ☐ Agent
☐ Addressee

B. Received by (Printed Name)

MICHELLE BURNHAM

C. Date of Delivery

4/5

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

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Joelle Burns
State of Utah
Division of Oil, Gas and Mining
1594 West North Temple Suite 1210
Salt Lake City UT 84114-5801

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OIL GAS & MINING



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M/035/023

4/1/05

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TRACY BURNHAM - DECORATIVE LANDSCAPING

Street, Apt. No.; or PO Box No.

3231 N MILLCREEK RD

City, State, ZIP+4

PLEASANT GROVE UT 84062

7099 3400 0000 9688 1454